



Date: February 13, 2012

To: Thomas J. Bonfield, City Manager
Through: Wanda Page, Deputy City Manager
From: Deborah Giles, EO/EA Director
Subject: Extension of the Ordinance to Promote Equal Business Opportunities in City Contracting and the Equal Business Opportunity Program (EBOP) Advisory Committee

Executive Summary

The Ordinance to Promote Equal Opportunities in City Contracting, Chapter 18, Article III of the City Code known as the Equal Business Opportunity Program (EBOP) and Resolution #9021 establishing the EBOP Advisory Committee will sunset on March 31, 2012. Unless the ordinance and the advisory committee are continued, the City of Durham will have no program to enforce the provision of equal opportunities for small firms owned by socially and economically disadvantaged persons. In the absence of another program to serve this function, it is requested that the Council continue the current EBOP ordinance and the EBOP Advisory Committee.

Recommendation

It is recommended that the City Council:

- (1) Adopt an ordinance to extend the sunset of the current Ordinance to Promote Equal Business Opportunities in City Contracting, Chapter 18, Article III of the City Code known as the Equal Business Opportunity Program (EBOP), until March 31, 2014; and
- (2) Extend the term of the EBOP Advisory Committee and its duties as they appear in Resolution #9021 until March 31, 2014.

Background

On May 8, 2003, the City Council adopted the Ordinance to Promote Equal Business Opportunities in City Contracting, Chapter 18 of the City Code as the Equal Business Opportunity Program (EBOP). Since adoption, EBOP has been the guidance for directing the City's policy of providing equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's marketplace. Section 18-61 of the ordinance states that the City Council shall establish an EBOP Advisory Committee. Subsequent to the adoption of the ordinance, through a separate resolution (#9021), the City Council approved the establishment of EBOP Advisory Committee on August 4, 2003. Since their inception, the City Council has extended the EBOP Ordinance and the EBOP Advisory Board on three occasions (March 20, 2006, March 17, 2008 and

March 15, 2010). Section 18-62(d) of the ordinance states that the EBOP shall sunset on March 31, 2012 at 11:59pm.

It had been originally anticipated that the current ordinance would be temporary until such time as the City completed a new Disparity Study and would have new information on which to base a race and gender sensitive program. Resources have been unavailable to date to fund a Disparity Study, estimated to cost approximately \$250,000 at a minimum. A Disparity Study provides the body of evidence to determine if SDBES have equal access to City contracting opportunities and identifies any revisions that might be necessary to have a constitutionally sound program based on requirements of court decisions. It is recommended that programs with race and gender-conscious components be reviewed every three to five years. The absence of updated information may jeopardize our program should it be subjected to a legal challenge.

Issues and Analysis

There are no resources currently available in the FY11-12 budget to perform a Disparity Study. Even if resources were available, conducting a study takes time. We would still need to extend the current ordinance to have a program in place until a new one could be developed based on new information from a study. Having no program in place would mean that the City would have no ability to enforce its policy of providing equal opportunities for city contracting for small, socially and economically disadvantaged business enterprises.

Alternatives

None. Without extending the sunset on the current ordinance and advisory committee, the City of Durham will have no program to enforce the provision of equal opportunities for small firms owned by socially and economically disadvantaged persons in City contracting activity.

Financial Impact

There is no financial impact for this item.

SDBE Summary

This item relates to extension of an ordinance and was not reviewed by the Department of Equal Opportunity/Equity Assurance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.

Attachments

Ordinance Extending the Sunset Period for the Ordinance to Promote Equal Business Opportunities in City Contracting